



HUMAN RIGHTS COMMISSION

[illegible]

1. On March 15, 2001, Complainant, Amber Reynolds, a minor, by Mark A Reynolds, filed a Charge of Discrimination against Respondents Hardee's, Marty Flowers and Dennis Wilson, alleging that she was the victim of sexual harassment.

2. On January 15, 2002, the Department of Human Rights served Respondents Flowers and Wilson with a Notice of Default based upon their failure to file a verified response to the Charge of Discrimination.

3. On March 26, 2002, the Department of Human Rights filed with the Human Rights Commission a petition for hearing to determine Complainant's damages due to the default status of Respondents Flowers and Wilson.

4. On April 17, 2002, the Commission found Respondents Flowers and Wilson to be in default, and set the matter for a damages hearing on July 10, 2002.

5. On July 10, 2002 neither the Complainant nor Respondents Flowers or Wilson appeared for the scheduled damages hearing.

6. On July 10, 2002, an Order was entered which directed the parties to file an appropriate motion which explained why she or he failed to appear at the hearing. The Order further cautioned that if, by July 22, 2002, no party filed a timely motion establishing good cause for that party's failure to appear at the damages hearing, a Recommended Order and Decision would be issued recommending that Respondents Flowers and Wilson be held in default on the issue of liability, but that Complainant receive no damages due to her failure to appear at the damages hearing.

7. No party has filed any pleading in response to the July 10, 2002 Order as of the date of this Recommended Order and Decision.

Conclusions of Law

1. Complainant is an "employee" as that term is defined under the Human Rights Act.

2. Respondent Marty Flowers is an "employee" and a "person" as those terms are defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

3. Respondent Dennis Wilson is an “employee” and a “person” as those terms are defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

4. As a consequence of the default order entered on July 10, 2002, all of the allegations contained in Complainant’s Charge of Discrimination pertaining to Respondents Flowers and Wilson are deemed admitted.

5. As a consequence of the parties’ failure to appear at the scheduled damages hearing, as well as Complainant’s failure to file any motion in response to the Order of July 10, 2002, Respondents Flowers and Wilson should be held in default on the Charge of Discrimination but Complainant should receive no damages.

Determination

The Commission should confirm its finding of liability against Respondents Flowers and Wilson due to the entry of the default order, but award Complainant no damages due to her failure to appear at the damages hearing or provide any reason for her failure to do so.

Discussion

On May 2, 2002, the Commission entered an order finding Respondents Flowers and Wilson to be in default on the issue of liability due to their failure either to file a verified response to the Charge of Discrimination or a Request for Review of the Department’s notice of default. Subsequently, the Commission entered an order which set the matter for a hearing on damages for July 10, 2002. However, neither Complainant nor Respondents Flowers or Wilson appeared at the hearing, and Order was entered on July 10, 2002 requiring the parties to file whatever motion they deemed appropriate to explain their non-appearance. The Order expressly provided that if no one filed a timely motion establishing good cause for that party’s failure to appear, a Recommended Order and Decision would be issued recommending that the default

judgment on the issue of liability be sustained against Respondents Flowers and Wilson, but that Complainant receive no award for damages as a result of her failure to appear for the damages hearing.

Accordingly, because Complainant has failed to appear at the damages hearing and has not filed a timely motion to continue the matter or otherwise explain her absence, it appears that Complainant has abandoned her claim. In such a situation, the Commission allowed the default finding to stand, but denied Complainant any damages. (See for example, Lash and World Travel Agency, ____ Ill. HRC Rep. ____ (1986CF2960, June 10, 1991).) In making this recommendation I note that Respondent Hardee's, while mentioned in the caption of the case, was not involved in the Department's motion for default, and thus the rulings in this case do not apply to it.

Recommendation

For all of the above reasons, it is recommended that the May 2, 2002 Order against Respondents Flowers and Wilson stand, but that Complainant receive no damages arising out of the default order.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 12TH DAY OF DECEMBER, 2002